

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
February 6, 2007 Session

**SONIA CRISTINA LEE HASTIE v. DAVID GRAHAM HASTIE**

**Appeal from the Chancery Court for Knox County**  
**No. 162793-3     Sharon Bell, Chancellor**

---

**No. E2006-01874-COA-R3-CV - FILED MAY 9, 2006**

---

Sonia Cristina Lee Hastie (“Wife”) sued David Graham Hastie (“Husband”) for divorce. The case was tried and the Trial Court entered a Judgment for Absolute Divorce finding and holding, *inter alia*, that Wife was entitled to a divorce on the grounds of inappropriate marital conduct; Wife was entitled to 50% of the portion of Husband’s military pension accrued during the marriage, which constitutes 12% of the monthly net pay; Wife was awarded \$100 per month as alimony *in futuro* specifically for payment of her medical insurance benefits until Wife is approved for Medicare or some other form of disability type health insurance coverage; and Wife was awarded an additional \$250 per month as alimony *in futuro*. Husband appeals to this Court raising issues regarding the awards of alimony *in futuro*. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed;  
Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Jennifer L. Chadwell, Knoxville, Tennessee for the Appellant, David Graham Hastie.

H. Douglas Nichol, Knoxville, Tennessee for the Appellee, Sonia Cristina Lee Hastie.

## **OPINION**

### **Background**

Wife was born in Colon, Republic of Panama, Central America. She obtained a high school education in Panama. Wife met Husband when he was in the United States Navy and was stationed in Panama. The parties were married in April of 1989. Wife had two children prior to her marriage to Husband. Husband adopted these children after the parties married. The parties raised these two children together and both children are over the age of eighteen. The parties had no children born to this marriage. During the marriage, Husband was stationed in Panama, Japan, and Korea. Wife accompanied Husband to all of his posts of duty during the marriage. When Husband retired in December of 1994, the parties moved to the United States. Wife is in the United States on a permanent Visa and has begun the process to become a United States citizen.

Wife sued Husband for divorce in November of 2004. The case was tried in May of 2006. Wife, who was fifty-two years old at the time of trial, testified that she worked outside the home during the entire time the parties were married. Wife worked in a military service club while in Japan. After the parties moved to the United States, Wife worked at Comet Dry Cleaners, Shoney's, and CVS. Currently, Wife works in the Goody's distribution center in the shipping department where she makes \$11.30 per hour. Wife has worked for Goody's for seven years. Wife testified that Goody's recently was purchased by another company. Prior to the purchase, Wife worked approximately 75 to 80 hours a week, but since the purchase her hours have been reduced. Wife currently works approximately 35 or 36 hours per week. Wife testified that during the marriage:

When [Husband] don't have a job, I used to work two jobs, Goody's and CVS. Sometimes at CVS I'd work nine hours, ten hours, and I get one hour sleep to get up for my next job, to be early before 7:00 in Goody's. So Goody's work was 7:00 to 3:45; CVS, 5:00 to 1:30, depends, 2:00 or 3:00 in the morning.

Wife testified that the longest period of time during which Husband was out of work lasted "about eight to nine months." Wife does not know how to drive and does not own an automobile. She relies on friends and co-workers to transport her to and from her work.

During the marriage, the parties purchased a house in Knoxville, Tennessee, where they lived. Husband told Wife he wanted a divorce sometime around September of 2004, and put the parties' house up for sale around that same time. The house sold quickly for \$118,000. The net proceeds from the sale of the house were approximately \$16,000. Husband then gave Wife \$2,700 of the proceeds from the sale of the house for a down-payment on a trailer, where Wife currently lives.

The parties' adult son, Raphael, is living with Wife. Raphael does not have a job. Raphael has had Hodgkin's Disease and has undergone chemotherapy. Raphael Hastie testified at trial, and when asked about his Hodgkin's Disease, testified: "My doctors did say I was in remission, but it could come back within five years." Raphael admitted that Wife is supporting him but testified that he plans to move out of his mother's home after the divorce is finalized. He further admitted that he has not been to the doctor in a year.

Wife admitted that her estimate for food on her affidavit of expenses included food costs for her, her seven cats, and Raphael, and that her estimate for personal toiletries included things like toothpaste and shampoo for Raphael. Wife also admitted that her affidavit included an \$80 expense that represents car insurance for the parties' adult daughter. Wife pays for her son's cell phone and testified that she uses it as she has no other phone of her own.

Husband has a college education and was in the Navy for 24 years. He and Wife were married for six of those years. Husband began receiving his military pension after he retired from the Navy in 1995. He currently works for Continental Services doing merchandising and display for a retailer and is paid \$12 an hour.

Husband testified:

I did have an annuity, and the money did come from a re-enlistment bonus. Apparently there was a class action suit years back, and it just came out after I retired, and the money was from - - that was from 1976. And so I took out money and put it into an annuity.

Husband testified that he used money withdrawn from his annuity to pay off the parties' debts and to help him establish his new residence after the parties separated. Husband testified that at the time the parties separated sometime around October of 2004, his annuity was worth approximately \$19,000 or \$20,000, and as of December of 2004, the annuity was worth approximately \$7,000.

Husband testified that he used the proceeds from the sale of the parties' house to pay off debt accumulated by Wife and the parties' daughter and to make the down-payment on Wife's trailer. Husband also used some money from his annuity to pay off the parties' debts.

Husband admitted that the estimate for his phone bill on his affidavit of expenses includes his house phone, his cell phone, and his girlfriend's cell phone.

After the trial concluded, the Trial Court made several findings of fact and conclusions of law, but reserved some issues for a later hearing. Among its initial findings, the Trial Court found that Wife had shown a need for, and Husband had the ability to pay, alimony *in futuro* specifically for the payment of Wife's medical insurance benefits until Wife is approved for Medicare or some other form of disability type health insurance coverage. When considering whether any additional alimony was warranted, the Trial Court utilized the information given at the

trial that under the Trial Court's division of Husband's military pension Wife would be entitled to approximately \$582 per month of Husband's military pension. The Trial Court then found, based in part upon this information, that Wife had not shown a need for further alimony. The Trial Court also stated that it could not consider those expenses listed on Wife's affidavit that were actually her son's expenses.

The Trial Court held another hearing on August 11, 2006. At this hearing, among other things, the parties agreed that the correct calculation of Wife's share of Husband's military pension resulted in Wife's monthly portion of Husband's military pension being \$219, not the \$582 as initially found. Taking this new information into account, the Trial Court reconsidered an award of alimony beyond the \$100 intended specifically for medical insurance benefits. The Trial Court found that Wife had shown a need for additional alimony and that Husband had the ability to pay. The Trial Court considered all of the evidence including the fact that under its previous findings Wife would have received approximately \$360 more per month of Husband's military pension, and held that Wife was entitled to an additional \$250 per month in alimony *in futuro*.

The Trial Court entered a Judgment for Absolute Divorce on August 29, 2006. In this judgment, Wife was granted a divorce on the grounds of inappropriate marital conduct; Wife was awarded 50% of that portion of Husband's military pension accrued during the marriage, which constitutes 12% of the monthly net pay; Wife was awarded \$100 per month as alimony *in futuro* specifically for payment of her medical insurance benefits until Wife is approved for Medicare or some other form of disability type health insurance coverage; and Wife was awarded an additional \$250 per month as alimony *in futuro*. Husband appeals to this Court.

### **Discussion**

Although not stated exactly as such, Husband raises two issues on appeal: 1) whether the Trial Court erred in reconsidering the issue of alimony prior to its entry of Judgment for Absolute Divorce; and, 2) whether the Trial Court erred in awarding Wife alimony *in futuro*.

Our review is *de novo* upon the record, accompanied by a presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). A trial court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *S. Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

We begin by considering whether the Trial Court erred in reconsidering the issue of alimony prior to its entry of Judgment for Absolute Divorce. In essence, Husband argues that the Trial Court announced its findings and decision relative to this issue immediately after the trial and that it was error for the Trial Court to reconsider this issue at the August 11, 2006 hearing. Husband argues it was error for the Trial Court to reconsider this issue because Wife did not file a motion or pleading "in accordance with the Tennessee Rules of Civil Procedure asking for the relief sought and stating grounds for entitlement thereof," and Wife did not give Husband notice prior to the day of

the August 11, 2006 hearing that she intended to raise this issue.

Rule 54 of the Tennessee Rules of Civil Procedure provides, in pertinent part:

**54.02. Multiple Claims for Relief.** – When more than one claim for relief is present in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court, whether at law or in equity, may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

Tenn. R. Civ. P. 54.02.

The Trial Court did not enter its judgment until August 29, 2006, after the August 11, 2006, hearing. The Trial Court's earlier findings and holdings, made immediately after the trial, never were designated as a final order. In fact, the Trial Court specifically reserved some issues for further hearing. Given this, under Tenn. R. Civ. P. 54.02, the Trial Court's decision was subject to revision by the Trial Court at any time before the entry of the final judgment. We find this issue to be without merit.

We next consider whether the Trial Court erred in awarding Wife alimony *in futuro* of \$250 per month. "Because the amount of alimony to be awarded, if any, is within the sound discretion of the trial court in light of the particular circumstances of the case, appellate courts will not alter such awards absent an abuse of discretion." *Morton v. Morton*, 182 S.W.3d 821, 836 (Tenn. Ct. App. 2005).

The factors a Trial Court shall consider when deciding whether to award alimony are found in Tenn. Code Ann. § 36-5-121, and include:

- (1) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;
- (2) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earnings capacity to a reasonable level;
- (3) The duration of the marriage;

- (4) The age and mental condition of each party;
- (5) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;
- (6) The extent to which it would be undesirable for a party to seek employment outside the home, because such party will be custodian of a minor child of the marriage;
- (7) The separate assets of each party, both real and personal, tangible and intangible;
- (8) The provisions made with regard to the marital property, as defined in § 36-4-121;
- (9) The standard of living of the parties established during the marriage;
- (10) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;
- (11) The relative fault of the parties, in cases where the court, in its discretion, deems it appropriate to do so; and
- (12) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

Tenn. Code Ann. § 36-5-121(I) (2005). “The court may direct a party to pay the premiums for insurance insuring the health care costs of the other party, in whole or in part, for such duration as the court deems appropriate.” Tenn. Code Ann. § 36-5-121(j) (2005). “The two most relevant factors in determining the amount of alimony awarded are the economically disadvantaged spouse's need and the obligor spouse's ability to pay.” *Broadbent v. Broadbent*, 211 S.W.3d 216, 222 (Tenn. 2006).

Husband argues, in part, that there was no showing of relative economic disadvantage between the parties because “the parties’ incomes and earning capacities are comparable and virtually identical.” The evidence in the record shows that Wife earns \$11.30 per hour, and Husband earns \$12 per hour. A consideration of the parties’ income, however, must necessarily include the monthly income from Husband’s military pension. The record shows that Husband is receiving approximately \$1,700 per month from his military pension and Wife receives approximately \$219 per month from the military pension. Husband’s total monthly income, including the income from the military pension that each party receives, exceeds Wife’s.

Husband also argues, in part, that Wife did not show a need for alimony because she admitted that she included some expenses for her adult children on her affidavit of expenses. Specifically, Husband complains about expenses for food for Raphael, toiletries for Raphael, Raphael’s cell phone bill and medical bills, and car insurance for the parties’ adult daughter. We begin by noting that Wife testified that although the cell phone belongs to Raphael, she uses it and it is her only phone. As this is Wife’s only phone, she is entitled to list this expense on her affidavit of expenses. As for the expenses for food and toiletries for Raphael, we note that the record reveals

that while Wife admitted at trial that she included things for Raphael in this category, no evidence whatsoever was introduced regarding what amount of the expenses listed by Wife actually was attributable to things for Raphael. Importantly, the Trial Court specifically stated that it could not consider Raphael's expenses and it is clear from the record that the Trial Court did not consider those expenses as it awarded Wife less in alimony than the stated difference between her income and the expenses shown on her affidavit of expenses. Further, we note that Husband admitted at trial that he had included the expense for his girlfriend's cell phone on his affidavit of expenses, even though Husband has his own house phone and cell phone.

Husband also argues that because Wife is living with her adult son a rebuttable presumption arose under Tenn. Code Ann. § 36-5-121(f) that Wife is not in need of alimony. In pertinent part, Tenn. Code Ann. § 36-5-121(f) provides:

(B) In all cases where a person is receiving alimony in futuro and the alimony recipient lives with a third person, a rebuttable presumption is raised that:

(i) The third person is contributing to the support of the alimony recipient and the alimony recipient does not need the amount of support previously awarded, and the court should suspend all or part of the alimony obligation of the former spouse; or

(ii) The third person is receiving support from the alimony recipient and the alimony recipient does not need the amount of alimony previously awarded and the court should suspend all or part of the alimony obligation of the former spouse.

Tenn. Code Ann. § 36-5-121(f)(2)(B) (2005).

The evidence in the record on appeal shows that Raphael Hastie plans to move out of Wife's home after the divorce is finalized. The Trial Court found that the presumption had been rebutted. The evidence does not preponderate against this finding.

Husband also argues on appeal that Wife is not entitled to the award of \$100 per month for medical insurance because Wife did not produce any documentation of the cost of insurance through her employer and because Wife is not uninsurable. Wife did, however, testify as to her need and the cost of obtaining medical insurance.

The Trial Court found that Wife had shown a need for \$100 per month for medical insurance and that Husband had the ability to pay. The evidence does not preponderate against these findings. "The court may direct a party to pay the premiums for insurance insuring the health care costs of the other party, in whole or in part, for such duration as the court deems appropriate." Tenn. Code Ann. § 36-5-121(j) (2005).

After a careful and thorough review of the record on appeal in light of the factors found in Tenn. Code Ann. § 36-5-121(I), we find no abuse of discretion in the Trial Court's award of \$100 per month as alimony *in futuro* specifically for payment of Wife's medical insurance

benefits until Wife is approved for Medicare or some other form of disability type health insurance coverage or the award of \$250 per month as alimony *in futuro*. We affirm the Trial Court's August 29, 2006 Judgment for Absolute Divorce.

### **Conclusion**

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellant, David Graham Hastie, and his surety.

---

D. MICHAEL SWINEY, JUDGE